Robins, 4 Hurl. & N. 186; *Wilms* v. *Jess*, 94 Ill. 464, 34 Am. Rep. 242; *Fornandis* v. *Great Northern R. Co.*, 41 Wash. 486, 84 Pac. 18, 111 Am. St. Rep. 1027, 5 L. R. A. (N. S.) 1086. See *Stearns* v. *Richmond*, 88 Va. 992, 29 Am. St. Rep. 758, and note. Other cases, upon the theory that an adjoining landowner erects at his peril, hold that in the absence of negligence the excavating party is liable only for the damage to the soil. *Gilmore* v. *Driscoll*, *supra*; *Gildersleeve* v. *Hammond*, *supra*.

Ordinarily, the question whether superstructure caused the soil to fall, in any given case, is for the jury; but it has been held that an ordinary fence is not such additional weight as will deprive the landowner of his right to recover for injury to the soil. *Oneil* v. *Harkins*, 8 Bush (Ky.) 650. If this be so, then, according to the first line of cases above, it would seem that the plaintiff, in the principal case, could recover for the damage to his fence as well as to the soil. But, according to the opposite view, he can recover only for the injury to his soil. *Gilmore* v. *Driscoll*, *supra*.

ADVERSE POSSESSION—TACKING OF HOLDINGS—PRIVITY.—Through a mistake as to his boundary, the plaintiff's grantor fenced in and used land belonging to the defendant company. The land in dispute was not included in the deed to the plaintiff; but the fence was pointed out to him as being the true boundary to the land, and the fenced area was occupied by him as his own for a period, which if added to the period during which it was occupied by his grantor, would amount to the time required by the statute of limitations. *Held*, the plaintiff is entitled to the land. *Helmick* v. *Davenport, R. I. & N. W. Ry. Co.* (Ia.), 156 N. W. 736.

In England and a few of the American States, no privity is required between successive adverse possessors in order for them to tack their holdings to complete the period required by the statute of limitations. *Shannon* v. *Kinney*, 1 A. K. Marsh. (Ky.) 3, 10 Am. Dec. 705; *Fanning* v. *Wilcox*, 3 Day (Conn.) 258. See 3 HARV. L. REV. 324. Other courts arrive at practically the same result by presuming a grant from the state, where land has been occupied for a prescribed period without a hiatus in the possession. *Davis* v. *McArthur*, 78 N. C. 357; *Scales* v. *Cockrill*, 3 Head (Tenn.) 432. And see *Cowles* v. *Hall*, 90 N. C. 330. The almost universal rule in this country, however, is that the adverse possessors must be in privity to tack their holdings. *Allis* v. *Field*, 89 Wis. 327, 62 N. W. 85; *Low* v. *Schaffer*, 24 Or. 239, 33 Pac. 678.

Privity, in this connection, means privity of possession—that the later occupant has obtained the possession of the former. *Illinois Steel Co.* v. *Budzisz*, 106 Wis. 499, 81 N. W. 1027, 48 L. R. A. 702. Hence, tacking is allowed between ancestor and heir. *Williams* v. *McAliley*, Cheves (S. C.) 200. See *Sawyer* v. *Kendall*, 10 Cush. (Mass.) 241. And it is generally agreed that tacking is permissible between grantor and grantee, although there are a few cases to the contrary. *Frost* v. *Courtis*, 172 Mass. 401, 52 N. E. 515. But see *Garrett* v. *Weinberg*, 48 S. C. 28, 26 S. E. 3. By the great weight of authority, where the land claimed is actually occupied, a transfer by a defective deed, by parol, or any voluntary transfer creates sufficient privity between the parties

for tacking. *Crispen* v. *Hannavan*, 50 Mo. 536; *Clithero* v. *Fenner*, 122 Wis. 356, 99 N. W. 1027, 106 Am. St. Rep. 978; *Crawford* v. *Viking Refrigerator Co.*, 84 Kan. 203, 114 Pac. 240, 35 L. R. A. (N. S.) 498; *Ramsey* v. *Glenney*, 45 Minn. 401, 48 N. W. 322, 22 Am. St. Rep. 736. But, if the first occupant's possessory interest in the land is such a valuable interest that it hastens the vesting of his transferee's title under the statute of limitations, the transfer should be made in conformity with the requirements of the statute of conveyances; or, if it passes no interest, no privity should be created by it. See MINOR, REAL PROPERTY, § 1030; *Ward* v. *Bartholomew*, 6 Pick. (Mass.) 409; *Sawyer* v. *Kendall*, *supra*.

The requirement of privity is based on the theory that the possession of the deseisee revives between successive disseisins, and gives him another cause of action against the later occupant; but, if there is privity, the possession of the deseisee does not revive to give him a new cause of action, since the possession of the prior is transferred to the later occupant. *Sawyer* v. *Kendall*, *supra*; *Witt* v. *St. Paul, etc., Ry. Co.*, 38 Minn. 122, 35 N. W. 862. Whatever may be thought of the soundness of the reasons on which the rule is based, it is manifest that it tends to preserve stale claims for the negligent claimant, and hence is repugnant to the very purpose of the statute of limitations. See *Lewis* v. *Marshall*, 5 Pet. 470, 477; *Sailor* v. *Hertzog*, 2 Pa. St. 182, 185. The rather illogical position of most of the courts, in allowing any voluntary transfer to constitute the requisite privity does away with most of the objections to the doctrine; but it would seem better to discard it altogether, and only require continuity of possession in order for the holdings of successive occupants to be tacked. *Shannon* v. *Kinney*, *supra*.

ATTACHMENT—RIGHT OF INTERVENTION BY CLAIMANT—LANDLORD'S LIEN.—A statute authorized any person to intervene who had an interest in the matter in litigation, or in the success of either of the parties to the action, or against both. The appellee, a landlord, claimed the right, under this statute, to intervene in an attachment proceeding to assert his lien upon the property attached. *Held*, the landlord has no such interest in the matter in litigation as to give him the right to intervene. *Consolidated Liquor Co.* v. *Scottello & Nizzi et al.* (N. M.), 155 Pac. 1089.

In some jurisdictions, where the right of a claimant of attached property to intervene in attachment proceedings is not given by statutes, it is held that no such right exists; and he must resort to a separate action to enforce whatever rights he may have. *Cartwright* v. *Bamberger*, 90 Ala. 405, 8 South. 264; *Dorroh* v. *Bailey* (Tex. Civ. App.), 125 S. W. 620; *Cornell Co.* v. *Boyer* (R. I.), 82 Atl. 385. There being no such proceeding as attachment at comon law, the whole matter is regulated by statute, and any petition for intervention must be authorized in like manner. *Pennsylvania Steel Co.* v. *New Jersey Ry. Co.*, 4 Houst. (Del.) 572. In other jurisdictions, even in the absence of statute, the courts have permitted claimants of attached property to intervene in the attachment suit on the ground that to deny the right, there being no